

8-261A190

RECORDATION NO.

9697

Filed &amp; Recorded

Date SEP 18 1978

SEP 18 1978 -4 22 PM

RECORDATION NO.

9698

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Fee \$ 1.50.

INTERSTATE COMMERCE COMMISSION

SEP 18 1978 -4 22 PM  
SEP 18 1978 -4 22 PM  
INTERSTATE COMMERCE COMMISSION

Washington, D. C.

RECORDATION NO.

9699

Filed &amp; Recorded

Secretary

Interstate Commerce Commission

Washington, D. C. 20423

SEP 18 1978 -4 22 PM

RECORDATION NO.

9598

Filed &amp; Recorded

Dear Sir:

INTERSTATE COMMERCE COMMISSION

SEP 18 1978 -4 22 PM

Enclosed for recordation under the provisions of Section 20c of the Interstate Commerce Act and the regulations promulgated thereunder, as amended, are the original and two certified copies each of a Loan and Security Agreement dated September 15, 1978, a Lease Agreement dated September 15, 1978, and a Management Agreement dated September 15, 1978.

A general description of the railroad equipment covered by the enclosed documents is as follows:

Fifty (50) 50'-6", 70-ton, single sheathed boxcars with outside posts, with 10' sliding doors and rigid underframe, within Plate "C", bearing reporting marks and numbers NHIR 751 through NHIR 800 inclusive, with AAR Mechanical Designation XF.

The names and addresses of the parties to the enclosed documents are:

A. Loan and Security Agreement:

DEBTOR: McHugh Brothers  
152 Monroe Avenue  
Penndel, PA 19047

SECURED PARTY: U. S. Steel Credit Corporation  
Room 5688  
600 Grant Street  
Pittsburgh, PA 15230

B. Lease Agreement:

LESSOR: McHugh Brothers  
152 Monroe Avenue  
Penndel, PA 19047

LESSEE: New Hope & Ivyland Railroad Company  
P. O. Box 196  
Penndel, PA 19047

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I.C.C.  
FEE OPERATION BR.

*Consent*

C. Management Agreement:


FIRST PARTY: McHugh Brothers  
152 Monroe Avenue  
Penndel, PA 19047

SECOND PARTY: New Hope & Ivyland Railroad Company  
P. O. Box 196  
Penndel, PA 19047

Please return the original and one copy of each of the enclosed documents to Charles T. Kappler, Esq., Alvord & Alvord, 200 World Center Building, 918 Sixteenth Street, N.W., Washington, D. C. 20006, with the recording certification data stamped thereon.

Very truly yours,

MCHUGH BROTHERS

By   
James C. McHugh,  
Partner

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

9/18/78

OFFICE OF THE SECRETARY

**Charles T. Kappler, Atty.**  
**Alvord & Alvord**  
**200 World Center Building**  
**918 16th Street, N.W.**  
**Washington, D.C. 20006**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,

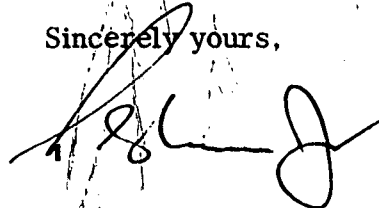
49 U.S.C. 20(c), on **9/18/78**

at **4:30pm**

and assigned recordation number(s)

**9697, 9698, 9698-A & 9699**

Sincerely yours,



**H.G. Homme, Jr.,**  
**Acting Secretary**

Enclosure(s)

SE-30-T  
(2/78)

RECORDATION NO. 9697 Filed & Recorded

SEP 18 1978 4 22 PM

MINNESOTA COMMERCE COMMISSION

LOAN

AND

SECURITY AGREEMENT

Dated as of September 15, 1978

BETWEEN

McHUGH BROTHERS,

DEBTOR

AND

U. S. STEEL CREDIT CORPORATION,

LENDER/SECURED PARTY

CONFORMED COPY

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LOAN  
AND  
SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT dated as of September 15, 1978 is between McHUGH BROTHERS, a Pennsylvania general partnership (the Debtor), and U. S. STEEL CREDIT CORPORATION, a Delaware corporation (the Lender or Secured Party).

RECITALS:

A. Pursuant to an agreement between the Debtor and Emons Railcar Corp., (the Builder), the Debtor has agreed to purchase certain railroad equipment (the Equipment) as more fully described in Schedule I to this Agreement, transfer of title to which shall be evidenced by a Bill of Sale in the form attached hereto as Exhibit A (the Bill of Sale).

B. The Lender has agreed to lend to the Debtor, in not more than five (5) separate advances, the purchase price for the Equipment but not more than \$1,900,000 (the Loan), with any additional purchase price for the Equipment in excess of \$1,900,000 to be paid by the Debtor with its own funds.

C. To evidence each advance of the Loan, the Debtor will execute and deliver a secured promissory

note to the order of the Lender in the amount of that advance, dated the date of that advance and substantially in the form attached hereto as Exhibit B (collectively, the Notes, and individually, a Note).

D. The Notes and all principal thereof and interest (and premium, if any) thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Debtor under the terms of the Notes or this Agreement are hereinafter sometimes referred to as "indebtedness hereby secured".

E. Payment of the indebtedness hereby secured is jointly and severally guaranteed by New Hope and Ivyland Railroad Company, McHugh Brothers Heavy Hauling, Inc., Bucks County Construction Co., McHugh Brothers Crane Rentals, Inc., McHugh Brothers Equipment Corp., McHugh Brothers Equipment Co., Inc., James C. McHugh and Jeanette M. McHugh, his wife, Robert C. McHugh and Christina J. McHugh, his wife, Edward L. McHugh and Barbara J. McHugh, his wife, Gerard J. McHugh and Maryjane McHugh, his wife, and Adelaide Mary McHugh Riley and Michael C. Riley, her husband (hereinafter sometimes referred to collectively, as the Guarantors, and individually, as a Guarantor), under and pursuant to that certain Continuing Guaranty dated as of the date hereof (the Guaranty), made by the Guarantors in favor of the Secured Party.

F. The indebtedness hereby secured is also secured by a security interest in certain construction equipment (the Construction Equipment Collateral) and in the rents, issues, income, profits and avails therefrom, granted to the Secured Party by McHugh Bros. Equipment Corp. and McHugh Brothers Crane Rentals, Inc. (collectively, the Construction Equipment Owner), under and pursuant to that certain Construction Equipment Security Agreement between the Construction Equipment Owner and the Secured Party, dated as of the date hereof (the Construction Equipment Security Agreement).

G. All of the requirements of law relating to the transaction contemplated hereby have been fully complied with and all other acts and things necessary to make this Agreement a valid, binding and legal instrument for the security of the Notes have been done and performed.

Section 1. GRANT OF SECURITY

The Debtor in consideration of the premises and other good and valuable consideration, receipt and sufficiency whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Notes according to their tenor and effect, and to secure the payment of all other indebtedness hereby secured and the performance and observance of all covenants and conditions in the Notes and in this Agreement contained, does hereby convey, warrant, mortgage, pledge, assign, and grant

to the Secured Party, its successors and assigns, a security interest in all and singular of the Debtor's right, title and interest in and to the properties, rights, interests and privileges described in Sections 1.1, 1.2 and 1.3 together with the proceeds thereof, subject always to the exceptions contained in Section 1.6 hereof (all of which properties, rights, interests and privileges hereby mortgaged, assigned and pledged, or intended so to be, are hereinafter collectively referred to as the Collateral).

1.1 Equipment Collateral. Collateral includes the railroad equipment described in Schedule I attached hereto and made a part hereof (collectively, the Equipment, and individually, an Item or Item of Equipment), together with all accessories, equipment, parts and appurtenances appertaining or attached to any of said railroad equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of, and additions, improvements, accessions and accumulations to, any and all of said railroad equipment, and together with all the rents, issues, income, profits and avails therefrom.

1.2 Lease and Management Agreements Collateral. Collateral also includes all right, title, interest, claims and demands of the Debtor in, to and under that certain Lease Agreement and that certain Management Agreement, both

dated as of the date hereof (the Lease and Management Agreements), between the Debtor and New Hope and Ivyland Railroad Company (NHIRC), under which the Equipment has been leased and delivered, including all extensions of the terms of said Agreements, together with all rights, powers, privileges, options and other benefits of the Debtor under the said Agreements, including, without limitation, but subject always to the exceptions contained in Section 1.6 hereof:

(a) The immediate and continuing right to receive and collect all rentals, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable to or receivable by the Debtor under or pursuant to either or both of said Agreements;

(b) The right to make all waivers and agreements and to give and receive duplicate copies of all notices and other instruments or communications; and

(c) The right to take such action upon the occurrence of an event of default under either or both of said Agreements or an event which with the lapse of time or giving of notice, or both, would constitute an event of default under either or both of said Agreements, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by said

Agreements or by law, and to do any and all other things whatsoever which the Debtor or any lessor is or may be entitled to do under either or both of said Agreements; it being the intent and purpose hereof that subject always to the exceptions contained in Section 1.6 hereof, the assignment and transfer to the Secured Party of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Secured Party shall have the right to collect and receive said revenue, insurance proceeds, condemnation awards and other payments for application in accordance with the provisions of Section 4 hereof at all times during the period from and after the date of this Agreement until the indebtedness hereby secured has been fully paid and discharged.

1.3 Bill of Sale Collateral. Collateral also includes all right, title, interest, claims and demands of the Debtor in, to and under each Bill of Sale and any and all other contracts and agreements relating to the Equipment or any rights or interests therein to which the Debtor is now or hereafter may be a party, together with all rights, powers, privileges, options and other benefits of the Debtor under each Bill of Sale and each and every other such contract and agreement, it being the intent and

purpose hereof that, subject always to the exceptions contained in Section 1.6 hereof, the assignment and transfer to the Secured Party of said rights, powers, privileges, options and other benefits shall be effective immediately and operative immediately and shall continue in full force and effect until the indebtedness hereby secured has been fully paid and discharged.

1.4 Limitations to Security Interest. The security interest granted by this Section 1 is subject to the lien of current taxes and assessments not in default (but only if such taxes are entitled to priority as a matter of law), or, if delinquent, the validity of which is being contested in good faith and by appropriate legal or administrative proceedings and the nonpayment whereof does not, in the sole judgment of the Secured Party, affect the properties, rights, interests and privileges of the Secured Party in or to the Equipment or otherwise under this Agreement.

1.5 Duration of Security Interest. The Secured Party, its successors and assigns, shall have and hold the Collateral forever; provided, always, however, that such security interest is granted upon the express condition that if the Debtor shall pay or cause to be paid all the indebtedness hereby secured and shall observe, keep and perform all the terms and conditions, covenants and agreements herein



and in the Notes contained, then these presents and the estate hereby granted and conveyed shall cease and this Agreement shall become null and void; otherwise to remain in full force and effect.

1.6 Excepted Rights in Collateral. There are expressly excepted and reserved from the security interest and operation of this Agreement the following described properties, rights, interests and privileges (hereinafter sometimes referred to as the Excepted Rights in Collateral) and nothing herein or in any other agreement contained shall constitute an assignment of the Excepted Rights in Collateral to the Secured Party:

(a) Any insurance proceeds payable under general public liability policies maintained by Debtor or by NHIRC pursuant to the Lease and Management Agreements which by the terms of such policies are payable directly to the Debtor for its own account; and

(b) All rights of the Debtor to purchase the Equipment from the Builder; provided, nevertheless, that the Excepted Rights in Collateral shall at no time include any right to receive payment of insurance proceeds or other amounts described in Sections 1.6(a) or 1.6(b) hereof which shall accrue after the exercise by the Secured Party of any of its rights, privileges or remedies described in Section 5.2(e) of this Agreement.

Section 2. COVENANTS AND WARRANTIES OF THE DEBTOR.

The Debtor covenants, warrants, represents and agrees as follows:

2.1 Debtor's Duties. The Debtor covenants and agrees well and truly to perform, abide by and to be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreements set forth in the Notes and in this Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to any or all of the Notes were fully set out in an amendment or supplement to this Agreement.

2.2 Warranty of Title. The Equipment is free and clear of all liens and encumbrances except the security interest of the Secured Party under this Agreement and the leasehold interest of NHIRC under the Lease and Management Agreements. Said leasehold interest of NHIRC is subject and subordinate in all respects to the security interest of the Secured Party under this Agreement and to all of the rights, powers and privileges of the Secured Party hereunder. The Debtor has the full ownership of, and the complete right,

power and authority to grant a first security interest in the Collateral to the Secured Party for the uses and purposes herein set forth, as contemplated hereby; and the Debtor will warrant and defend the title to the Collateral against all claims and demands of all persons whatsoever except persons claiming by, through or under the Secured Party. The Debtor agrees to pay or discharge any and all claims, liens, charges or security interests claimed by any person (other than by, through or under the Secured Party), equal or superior to the Secured Party's security interest in the Collateral, which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Collateral, but the Debtor shall not be required to discharge such claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings and the nonpayment thereof does not, in the sole judgment of the Secured Party, adversely affect the security interest of the Secured Party in or to the Collateral or any portion thereof.

2.3 Further Assurances. The Debtor will, at no expense to the Secured Party, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the security interest being herein provided for in

the Collateral, whether now owned or hereafter acquired. Without limiting the foregoing but in furtherance of the security interest herein granted in the revenues and other sums due and to become due under the Lease and Management Agreements, the Debtor covenants and agrees that it will cause NHIRC to be notified of such assignment pursuant to the Lease and Management Agreements and will direct NHIRC to make all payments of such revenues and other sums due and to become due under the Lease and Management Agreements, other than the Excepted Rights in Collateral, as the Secured Party may direct.

2.4 After-acquired Property. Any and all property described or referred to in the granting clauses hereof which is hereafter acquired shall ipso facto, and without any further conveyance, assignment or act on the part of the Debtor or the Secured Party, become and be subject to the security interest herein granted as fully and completely as though specifically described herein, but nothing in this Section 2.4 contained shall be deemed to modify or change the obligation of the Debtor under Section 2.3 hereof.

2.5 Recordation and Filing. The Debtor will cause this Agreement and any supplements hereto, the Lease and Management Agreements and any supplements thereto and all financing and continuation statements and similar

notices required by applicable law, at all times to be kept, recorded and filed at no expense to the Secured Party in such manner and in such places as may be required by law in order fully to preserve and protect the rights of the Secured Party hereunder, and will at its own expense furnish to the Secured Party promptly after the execution and delivery of this Agreement and of any supplemental security agreement an opinion of counsel acceptable to the Secured Party stating that in the opinion of such counsel this Agreement or such supplement, as the case may be, has been properly recorded or filed for recording so as to make effective of record the security interest intended to be created hereby and that there is no prior recorded security interest in the Collateral.

2.6 Modification of the Lease and Management Agreements. The Debtor will not:

(a) Declare a default or exercise the remedies of the Debtor under, or terminate or modify or accept a surrender of, or offer or agree to, any termination or modification or surrender of, either or both of the Lease and Management Agreements or permit or consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the leasehold estate created by the Lease and Management Agreements or any part thereof; or

(b) Receive or collect or permit the receipt or collection of any payment under either or both of the Lease and Management Agreements prior to the date for payment thereof provided for therein, or assign, transfer or hypothecate (other than to the Secured Party hereunder or as provided in Section 6 hereof) any rental payment then due or to accrue in the future under the Lease and Management Agreements in respect of the Equipment; or

(c) Except as permitted pursuant to the terms of Section 6 hereof, sell, mortgage, transfer, assign or hypothecate (other than to the Secured Party hereunder) its interest in the Equipment or any part thereof or in any amount to be received by it from the use or disposition of the Equipment.

2.7 Power of Attorney in Respect of the Collateral.

Debtor does hereby irrevocably constitute and appoint the Secured Party its true and lawful attorney with full power of substitution for it and in its name, place and stead to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, income and other sums which are assigned under Sections 1.1, 1.2 and 1.3 thereof with full power to settle, adjust or compromise any claim thereunder as fully as the Debtor could itself do, and to endorse the name of the Debtor on all commercial paper given

given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Debtor or otherwise, which the Secured Party may deem necessary or appropriate to protect and preserve the right, title and interest of the Secured Party in and to such rents and other sums and the security intended to be afforded hereby.

2.8 Further Warranties and Representations of Debtor. The Debtor further covenants, warrants, represents and agrees as follows:

(a) The Debtor is a general partnership duly organized and validly existing under the Uniform Partnership Act of the Commonwealth of Pennsylvania, 59 Pennsylvania Consolidated Statutes, Chapter 3, and in good standing under the laws of the Commonwealth of Pennsylvania, and has full right, power and authority and all necessary licenses and permits to execute and deliver and to carry out the terms and provisions of this Agreement, the Notes and the Lease and Management Agreements. Until such time as this Agreement and the security interest granted hereby shall be released by the Secured Party as provided in Section 9.8 hereof, the Debtor (or its successor) shall continue to maintain its valid existence under the Uniform Partnership Act of the

Commonwealth of Pennsylvania and its good standing under the laws of said Commonwealth, and shall continue to maintain in full force and effect all of the said rights, powers, authority, licenses and permits.

(b) The Debtor's principal office and principal place of business is located at 152 Monroe Avenue, Penndel, Bucks County, Pennsylvania. The Debtor's principal office or principal place of business shall not be changed from time to time or at any time except after prior written notice shall have been given by the Debtor to the Secured Party, at least thirty (30) days prior to such change, specifying the address of the new location of the Debtor's principal office and principal place of business and the date of such change thereof. Without the prior written consent of the Secured Party, the Debtor's principal office or principal place of business shall not be changed to any location outside the Commonwealth of Pennsylvania.

(c) The partners of the Debtor consist of James C. McHugh, Edward L. McHugh, Robert C. McHugh, Gerard J. McHugh and Adelaide Mary McHugh Riley. All of said partners are domiciled in, and residents of, the Commonwealth of Pennsylvania. Within thirty (30) days after the date of any change in the members of the partnership constituting the Debtor (or its successor), the Debtor (or its successor) will give the Secured Party written notice thereof.



(d) This Agreement, the Notes and the Lease and Management Agreements have been duly authorized by the Debtor and, except for any Notes to be delivered on Closing Dates (as defined in Section 7.2 hereof) subsequent to the date of this Agreement, have been duly executed and delivered by the Debtor and constitute valid, legal and binding obligations of the Debtor enforceable in accordance with their respective terms except as enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally.

(e) The Guaranty, the Construction Equipment Security Agreement and the Subordination Agreement (as defined in Section 8.1 hereof) have been duly authorized, executed and delivered by the parties thereto other than the Secured Party, and constitute valid, legal and binding obligations of said parties enforceable in accordance with their respective terms except as enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally.

(f) There are no proceedings pending, or to the knowledge of the Debtor threatened, and to the knowledge of the Debtor there is no existing basis for any such proceedings, against or affecting the Debtor in any court or before any governmental authority or any arbitration board

or other tribunal, which, if adversely determined, would materially and adversely affect the right, power, authority or ability of the Debtor to make, enter into or perform this Agreement, the Notes or the Lease and Management Agreements.

(g) There are no proceedings pending, or to the knowledge of the Debtor threatened, and to the knowledge of the Debtor there is no existing basis for any such proceedings, against or affecting any of the parties to the Guaranty, the Construction Equipment Security Agreement or the Subordination Agreement, other than the Secured Party, in any court or before any governmental authority or any arbitration board or other tribunal, which, if adversely determined, would materially and adversely affect the right, power, authority or ability of any of said parties to make, enter into or perform the Guaranty, the Construction Equipment Security Agreement or the Subordination Agreement, as the case may be.

(h) To the knowledge of the Debtor, no Event of Default or event which with the passing of time or the giving of notice, or both, would constitute an Event of Default under and as defined in this Agreement has occurred and is continuing. The Debtor is not in violation in any material respect of any term or provision of this Agreement, the Notes or the Lease and Management Agreements.

(i) To the knowledge of the Debtor, the parties to the Guaranty, the Construction Equipment Security Agreement, and the Subordination Agreement, other than the Secured Party, are not in violation in any material respect of any term or provision thereof.

(j) No relationship between the Debtor or any Guarantor and any other person, firm, corporation, or other entity, organization or association, nor any circumstance in connection with the issuance or delivery of the Notes or the execution and delivery of this Agreement, the Notes or the Lease and Management Agreements or the Guaranty, the Construction Equipment Security Agreement or the Subordination Agreement, is such as to require a consent, approval or authorization of, or filing, registration or qualification with, any governmental authority on the part of the Debtor except for the filings contemplated by Section 8.2 hereof and the filings contemplated by the Construction Equipment Security Agreement with respect to the Construction Equipment Collateral.

(k) The financial statements listed on Schedule II attached hereto and made a part hereof, copies of each of which have been delivered by the Debtor to the Secured Party, have been prepared in accordance with generally accepted accounting principles consistently applied,

and present fairly the financial position and the results of operations of the persons, firms and corporations for which they were prepared, as of the dates and for the periods for which said financial statements were prepared; since the respective dates of the latest balance sheets of Debtor and the Guarantors, respectively, which are listed in Schedule II hereto, there has been no material adverse change in the condition, financial or otherwise, of the Debtor or the Guarantors, respectively, as shown on said balance sheets as of said dates, respectively; the said financial statements do not, nor does any written statement furnished by the Debtor to the Secured Party in connection with this Agreement or any other transaction contemplated hereby, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or the warranties or representations of the Debtor in this Agreement not misleading.

2.9 Payment of Taxes. The Debtor will pay and discharge or cause to be paid and discharged, not later than the due dates thereof, all taxes, assessments, levies, fees and other governmental or similar charges at any time or times imposed upon the Collateral or any part thereof, and promptly after each written request therefor by the Secured Party the Debtor shall exhibit to the Secured Party receipts

or other evidence satisfactory to the Secured Party showing such payment and discharge; provided, that the Debtor shall not be required to discharge any such tax, assessment, levy, fee or other charge so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings and the nonpayment thereof does not, in the sole judgment of the Secured Party, adversely affect the security interest of the Secured Party in or to the Collateral or any part thereof.

2.10 Compliance with Laws, Rules and Regulations.

The Debtor shall comply, and shall require every user of an Item of Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of each Item) with all laws, rules and regulations of the jurisdictions in which its or such user's operations involving an Item of Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules and regulations of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power of jurisdiction over an Item of Equipment, to the extent that such laws, rules and regulations affect the title, operation or use of an Item of Equipment. In the event that any such laws, rules or regulations require any alteration of

an Item of Equipment, or in the event that any equipment or appliance on an Item of Equipment shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on an Item of Equipment in order to comply with such laws, rules or regulations, the Debtor will make or cause to be made such alterations, changes, replacements and additions; provided, that the Debtor may, in good faith, contest the validity or application of any such law, rule or regulation in any reasonable manner which does not, in the sole judgment of the Secured Party, adversely affect the rights of the Secured Party under this Agreement or the security interest of the Secured Party in or to the Collateral or any part thereof. Without in any way limiting the generality of the foregoing, the Debtor shall cause to be properly prepared and duly executed and filed all documents relating to the registration, maintenance and record keeping functions for the Equipment in accordance with the rules and regulations of the Association of American Railroads, the Interstate Commerce Commission, the Department of Transportation and any other governmental or industry authority, including (without limitation) the following documents: (a) appropriate Association of American Railroads interchange agreements with respect to the Equipment; (b) registration of each Item of Equipment in the

Official Railway Equipment Register and the Universal Machine Language Equipment Register (such registration directing that correspondence from railroads using such Items of Equipment be addressed to the NHIRC); and (c) such reports as may be required from time to time by the Interstate Commerce Commission and other regulatory agencies with respect to the Equipment.

2.11 Maintenance and Repair. The Debtor shall use the Equipment, and permit the Equipment to be used, only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Debtor shall cause the Equipment to be maintained and kept in good order, condition and repair so that each Item will remain (a) in as good operating condition as when delivered by the Builder (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws, rules and regulations and (c) desirable to and suitable for immediate purchase or lease and use by a Class I railroad (not then or prospectively a debtor in any insolvency or reorganization proceeding). Except as required by the provisions of Section 2.10 hereof, the Debtor shall not make, or permit the making of, any permanent or other material modification to any Item of Equipment without the prior written approval of the Secured Party, which shall not be unreasonably withheld. Any parts installed or replacements made upon any Item of Equipment shall be considered

accessions to such Item of Equipment and shall be subject to the security interest of the Secured Party under this Agreement.

2.12 Marking of Equipment. The Debtor will cause each Item of Equipment to be kept numbered with the identifying number as set forth in Schedule I hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed upon each side of each item of Equipment in letters not less than one inch in height as follows:

"Leased from a partnership and subject to a Security Interest recorded with the I.C.C." with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Debtor's title to such Item of Equipment, the rights of the Secured Party under this Agreement, and the security interest of the Secured Party in the Collateral. The Debtor will not place any Item of Equipment in operation or permit the same to be placed in operation until the required legend shall have been so marked on both sides thereof, and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Debtor will not change the identifying number of any Item of Equipment or permit the same to be changed except with the prior written consent of the Secured Party and in accordance with a statement of new



identifying numbers to be substituted therefor, which consent and statement shall have been previously filed with the secured Party by the Debtor and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited. Except as provided in this Section 2.12, the Debtor will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Debtor may permit the Equipment to be lettered with the names or initials or other insignia customarily used by NHIRC on such equipment used by it of the same or a similar type for convenience of identification of the right of NHIRC to use the Equipment under the Lease and Management Agreements.

2.13 Property Insurance. The Debtor will maintain or cause to be maintained at all times, with insurance carriers having one of the three highest ratings as reported by A. M. Best Company, Inc. (or other insurance rating agency of comparable standing) or other reputable insurance carriers acceptable to the Secured Party, insurance in an amount not less than the aggregate unpaid principal balance of all of the Notes at the time outstanding, insuring the Equipment against loss, destruction and damage arising out of fire, windstorm, explosion, and all other hazards and risks ordinarily subject

to extended coverage insurance, against theft and malicious mischief, and against such other hazards and risks as are customarily insured against by railroad companies owning or leasing property of a similar character, with a deductible amount not in excess of \$5000 per Item of Equipment. All such insurance policies shall (a) name the Secured Party as an insured and as loss payee under a standard mortgage loss payable clause satisfactory to the Secured Party, (b) provide that the policies will not be invalidated as against the Secured Party because of any violation by any other insured of any condition, warranty or declaration of the policy or the application therefor, (c) provide that the policies may be materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Secured Party, (d) provide that the policies shall be prepaid a minimum of ninety (90) days, (e) waive any right of subrogation to any right of the Secured Party and (f) provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of insureds other than the Secured Party) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Secured Party. Such insurance policies shall also not have any co-insurance clauses.

2.14 Liability Insurance. The Debtor will maintain or cause to be maintained at all times, with insurance carriers having one of the three highest ratings as reported by A. M. Best Company, Inc. (or other insurance rating agency of comparable standing) or other reputable insurance carriers reasonably acceptable to the Secured Party, insurance against liability for bodily injury and third party property damage covering each Item of Equipment with liability limits satisfactory to the Secured Party and with no deductibles not previously approved in writing by the Secured Party. The policies for such insurance shall (a) name the Secured Party as an additional insured, (b) provide that if the insurer cancels such insurance for any reason whatsoever, or the same is allowed to lapse for nonpayment of premium, such cancellation or lapse shall not be effective as to the Secured Party for thirty (30) days after written notice to the Secured Party by the insurer of such cancellation or lapse, (c) provide for at least thirty (30) days prior written notice to the Secured Party of any alteration in the terms of such policy adverse to the interest of the Secured Party, (d) provide that in respect of the interest of the Secured Party in such policy, the insurance shall not be invalidated by any action or inaction of any person other than the Secured Party, (e) insure the Secured Party's interest regardless of any violation by any

other insured of any warranties, declarations or conditions contained in such policy and (f) provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of insureds other than the Secured Party) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Secured Party. Such insurance policies shall also not have any co-insurance clauses.

2.15 Evidence of Insurance and Other Reports.

The Debtor will furnish, or cause to be furnished, to the Secured Party the following:

(a) Prior to the first Closing Date (as defined in Section 7.2 hereof), duplicate insurance policies and certificates or other evidence satisfactory to the Secured Party, evidencing the maintenance of the insurance required pursuant to this Agreement and at least thirty (30) days prior to the expiration date of each policy or renewal policy under which any such insurance shall be maintained, a duplicate insurance policy or insurance certificate or other evidence satisfactory to the Secured Party, evidencing the renewal and continued maintenance of such insurance from and after such expiration date;

(b) At such time as the Secured Party may request, and thereafter from time to time but at least thirty (30) days prior to the expiration of each policy or renewal policy under which any insurance required by this Agreement shall be maintained, a certificate signed by a firm of independent insurance brokers not objected to by the Secured Party, showing and describing the insurance then maintained, or to be maintained in the case of renewals, pursuant to this Agreement, and the expiration date of each policy of such insurance, and stating the opinion of said firm that the insurance then carried and maintained, or to be carried and maintained, pursuant to this Agreement, complies, or will comply, as the case may be, with the terms hereof; provided, however, that the Secured Party shall be under no duty to examine such certificate, opinion or other evidence of insurance, or to advise the Debtor in the event that such insurance is not in compliance with this Agreement;

(c) On or before April 15 in each year, commencing with the year 1979, an accurate statement as of the end of the preceding calendar year signed by a partner of the Debtor (i) showing the numbers of the Items of Equipment then included in the Collateral, the amount, description and numbers of all Items of Equipment that have suffered loss,

damage, destruction or theft during such calendar year (or since the date of this Agreement, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Secured Party may reasonably request, (ii) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 2.12 hereof shall have been preserved or replaced, and (iii) stating that a review of the activities of the Debtor during such year has been made under his supervision with a view to determining whether the Debtor has kept, preserved, performed and fulfilled all of its obligations under this Agreement and that, to the best of his knowledge, the Debtor has during such year kept, preserved, performed and fulfilled all such covenants, obligations and conditions contained or referred to herein, or if an Event of Default, or an event which with the passage of time or the giving of notice or both would cause an Event of Default, has occurred and is continuing, specifying such Event of Default and all such events and the nature and status thereof;

(d) As soon as available, and in any event within 120 days after the end of each fiscal year of the Debtor, copies, in comparative form with the preceding fiscal year, of the Debtor's balance sheet as at the end of such

fiscal year, and of the Debtor's statements of income and retained earnings for such fiscal year, in reasonable detail and stating in comparative form the figures as of the end of and for the Debtor's previous fiscal year, and certified by the Debtor's independent public accountants; and

(e) Such additional information as the Secured Party may reasonably request from time to time, in order to enable it to determine whether the covenants, terms and provisions of this Agreement have been complied with.

2.16 Secured Party's Inspection Rights. The Secured Party shall have the right, by its authorized representative, to inspect the Equipment and the records of the Debtor and NHIRC with respect thereto, at such times during normal business hours as shall be reasonable, to confirm the existence and proper maintenance thereof during the continuance of this Agreement.

2.17 Service Outside the United States of America. The Debtor shall not assign or permit the assignment of any Item of Equipment to service involving the regular operation and maintenance thereof outside the United States of America. No more than 10% of the Items of Equipment shall be permitted to be outside the United States at any one time.

2.18 Debtor's Acquisition and Maintenance of Ownership of the Stock of NHIRC. On or before December 31, 1978, the Debtor will cause its affiliate, McHugh Brothers

Heavy Hauling, Inc. (Heavy Hauling), to lease the assets of NHIRC as contemplated in the Plan of Reorganization of NHIRC filed in the United States District Court for the Eastern District of Pennsylvania, on February 10, 1975, at Bankruptcy Act No. 70-324, under the form of Agreement of Lease which was filed with said Court together with said Plan of Reorganization. The Debtor will cause Heavy Hauling to exercise, within two and one-half (2-1/2) years after the effective date of said Agreement of Lease, the option therein granted to Heavy Hauling to purchase all of the shares of stock of NHIRC, and the Debtor will then cause Heavy Hauling to acquire, within six (6) months after the exercise of said option, full ownership and voting control of all of the shares of stock of NHIRC. Following such acquisition by Heavy Hauling of said shares of stock and thereafter until all of the indebtedness hereby secured has been paid in full, the Debtor shall continue to maintain, directly in its own name or through control by the Debtor or its partners of Heavy Hauling or another affiliate of the Debtor, full ownership and voting control of all of the shares of stock of NHIRC, free and clear of all claims, liens and encumbrances.

Section 3. POSSESSION, USE AND RELEASE OF PROPERTY.

3.1 Possession of Collateral. While the Debtor is not in default hereunder it shall be suffered and permitted



to remain in full possession, enjoyment and control of the Equipment and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto, provided, always that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Agreement. It is expressly understood that the use and possession of the Equipment by NHIRC under and subject to the Lease and Management Agreements shall not constitute a violation of this Section 3.1.

3.2 Protection of Purchaser. No purchaser in good faith of any item or unit of the Collateral purporting to be released hereunder by the Secured Party shall be bound to ascertain the authority of the Secured Party to execute the release or to ascertain or inquire into the conditions upon which any such sale is authorized hereunder.

Section 4. APPLICATION OF CERTAIN INSURANCE PROCEEDS AND CERTAIN OTHER AMOUNTS.

4.1 Application to Costs of Repair or Replacement or to Payments on the Notes or Payment of Other Indebtedness Hereby Secured. The amounts received by the Secured Party from time to time which constitute proceeds of insurance maintained pursuant to Section 2.13 hereof, or which constitute payments by carriers by reason of loss of, damage to, or

destruction of, any of the Equipment, or which constitute payment for the condemnation, taking or requisition of any of the Equipment by any governmental authority under the power of eminent domain or otherwise, shall be held by the Secured Party as part of the Collateral and shall be applied by the Secured Party from time to time in its sole discretion, (a) to pay, or reimburse Debtor or NHIRC for the payment of, the costs of repairing or replacing the Equipment, or (b) to payment of any interest accrued and unpaid on the Notes or any of them, or (c) to payment or prepayment of any principal of the Notes or any of them, or (d) to the payment of other amounts, if any, constituting indebtedness hereby secured, or (e) for such purposes described in any one or more or all of the foregoing clauses (a), (b), (c) and (d) of this Section 4.1, and in such amounts, as the Secured Party may in its sole discretion elect.

4.2 Default. If an Event of Default shall have occurred and be continuing, any or all amounts received by the Secured Party pursuant to this Agreement may, at the option of the Secured Party, be applied in the manner provided in Section 5 hereof with respect to proceeds and avails of the Collateral.

#### Section 5. DEFAULTS AND OTHER PROVISIONS.

5.1 Events of Default. The term Event of Default shall mean one or more of the following:

(a) Default in payment of any installment of the principal of, or interest on, any Note when and as the same shall become due and payable, whether at the due date thereof or by acceleration or otherwise, and any such default shall continue for ten days; or

(b) An event of default, as defined in either or both of the Lease and Management Agreements; or

(c) An event of default, as defined in the Construction Equipment Security Agreement; or

(d) Default on the part of the Debtor in the due observance or performance of any covenant, condition or agreement to be observed or performed by the Debtor under this Agreement, or any of the Notes, and such default shall continue unremedied for 30 days after written notice from the Secured Party to the Debtor specifying the default and demanding the same to be remedied; or

(e) Any representation or warranty on the part of the Debtor made herein or in any report, certificate, financial or other statement furnished in connection with this Agreement or the Lease and Management Agreements, or the transactions contemplated herein or therein, shall prove to be false or misleading in any material respect when made; or

(f) Any claim, lien or charge (other than those permitted under Section 1.4 hereof) shall be asserted

against or levied or imposed upon any or all of the Collateral, and such claim, lien or charge shall not be discharged or removed within 30 days after written notice from the Secured Party to the Debtor demanding the discharge or removal thereof; or

(g) The Debtor, or any of its partners, or any guarantor of all or any part of the indebtedness hereby secured, becomes insolvent or bankrupt or admits in writing its, his or her inability to pay its, his or her debts as they mature or makes an assignment for the benefit of creditors, or the Debtor or any such partner or guarantor applies for or consents to the appointment of a trustee or receiver for the Debtor, such partner or such guarantor; or

(h) A trustee or receiver is appointed for the Debtor, or any of its partners, or any guarantor of all or any part of the indebtedness hereby secured, and is not discharged within 30 days after such appointment; or

(i) Any judgment, writ or warrant of attachment or any similar process shall be entered or filed against the Debtor, or any of its partners, or any guarantor of all or any part of the indebtedness hereby secured, or against any of the property or assets of the Debtor or any such partner or guarantor, and remains unpaid, unvacated and unstayed for any consecutive period of 30 days; or

(j) Bankruptcy or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Debtor, or any of its partners, or any guarantor of all or any part of the indebtedness hereby secured, and are consented to or are not dismissed within 60 days after such institution.

Notwithstanding the foregoing provisions of this Section 5.1, the proceedings for the reorganization of NHIRC under the Bankruptcy Act, which are referred to in Section 2.18 hereof, and the claims involved in said proceedings, shall not constitute an Event of Default hereunder if the Plan of Reorganization of NHIRC referred to in Section 2.18 hereof is consummated, and NHIRC is discharged from the claims involved in said proceedings, not later than December 31, 1978.

5.2 Secured Party's Rights. The Debtor agrees that when any Event of Default shall have occurred and be continuing, the Secured Party shall have the rights, options, duties and remedies of a secured party, and the Debtor shall have the rights and duties of a debtor, under the Uniform Commercial Code of the Commonwealth of Pennsylvania (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted), and:

(a) The Secured Party may, by notice in writing to the Debtor, declare the entire unpaid balance of the Notes to be immediately due and payable; and thereupon all such unpaid balance, together with all accrued interest thereon, shall be and become immediately due and payable;

(b) The Secured Party personally or by agents or attorneys, shall have the right (subject to compliance with any applicable mandatory legal requirements) to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any premises, with or without notice, demand, process of law or legal procedure, if this can be done without breach of the peace, and search for, take possession of, remove, keep and store the Collateral, or use and operate or lease the Collateral until sold; in the event the Secured Party shall demand possession of any or all of the Items of Equipment, then, without limiting its other rights, the Secured Party may require the Debtor, at the Debtor's own cost, expense and risk, (i) to forthwith assemble and place each such Item of Equipment upon such storage tracks within the continental United States as the Secured Party may designate, (ii) provide storage at the risk of the Debtor for each such Item of Equipment on such storage tracks until such Equipment has

been sold, leased or otherwise disposed of by the Secured Party, and (iii) transport each such Item of Equipment to any place of interchange on the lines of a railroad within a 50-mile radius of such storage tracks, all as the Secured Party shall direct;

(c) The Secured Party may, if at the time such action may be lawful (subject to compliance with any mandatory legal requirements), either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to the Debtor once at least ten days prior to the date of such sale, and any other notice which may be required by law, sell and dispose of said Collateral, or any part thereof, at public auction to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Secured Party may determine, and at any place (whether or not it be the location of the Collateral or any part thereof) designated in the notice above referred to; provided, however, that any such sale should be held in a commercially reasonable manner. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without

further published notice, and the Secured Party may bid and become the purchaser at any such sale;

(d) The Secured Party may proceed to protect and enforce this Agreement and the Notes by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted; or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper, legal or equitable remedy available under applicable law; and

(e) The Secured Party may proceed to exercise all rights, privileges and remedies of the Debtor under the Lease and Management Agreements or either of them, and may exercise all such rights and remedies either in the name of the Secured Party or in the name of the Debtor for the use and benefit of the Secured Party.

5.3 Acceleration Clause. In case of any sale of the Collateral, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Agreement, the principal of the Notes, if not previously due, and the



interest accrued thereon, shall at once become and be immediately due and payable; also in the case of any such sale, the purchaser or purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Notes and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Notes, including principal and interest thereof, out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in actual cash.

5.4 Waiver by Debtor. To the extent permitted by law, the Debtor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force nor claim, take, nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to a decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to

redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Secured Party, but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

5.5 Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all persons claiming the property sold or any part thereof or any interest therein under, by or through the Debtor, its successors or assigns.

5.6 Application of Sale Proceeds. The proceeds and/or avails of any sale of the Collateral, or any part thereof, and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including reasonable legal expenses and attorneys' fees, incurred or made hereunder by the Secured Party, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

(b) Second, to the payment of the amount then due, owing or unpaid on the Notes for principal and interest, and premium (if any); and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Notes, then ratably according to the aggregate of such principal and the accrued and unpaid interest, and premium (if any) with application on each Note to be made, first to unpaid interest thereon, second, to unpaid premium (if any), and third, to unpaid principal thereof; such application to be made upon presentation of the several Notes, and the notation thereon of the payment, if partially paid, or the surrender and cancellation thereof, if fully paid; and

(c) Third, to the payment of the surplus, if any, to the Debtor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

5.7 Discontinuance of Remedies. In case the Secured Party shall have proceeded to enforce any right under this Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, the Debtor and the Secured Party shall be restored to their former positions and rights hereunder with respect to the property subject to the security interest created under this Agreement.

5.8 Cumulative Remedies. No delay or omission of the Secured Party to exercise any right or power arising from any default on the part of the Debtor, shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Secured Party of any such default, whether such waiver be full or partial, shall extend or to be taken to affect any subsequent default, or to impair the rights resulting therefrom except as may be otherwise provided herein. The Secured Party may exercise any one or more or all of the remedies hereunder and no remedy is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing now or hereafter at law or in equity; nor shall the giving, taking or enforcement of

any other or additional security, collateral or guaranty for the payment of the indebtedness secured hereby operate to prejudice, waive or affect the security of this Agreement or any rights, powers or remedies hereunder, nor shall the Secured Party be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

5.9 Costs Incurred by Secured Party in Performing Debtor's Covenants. In the event that (a) the Debtor shall fail to pay or cause to be paid, within the time herein required, any tax, assessment, levy, fee or other charge which Debtor is herein required to pay or cause to be paid, or (b) the Debtor shall fail to maintain or cause to be maintained any insurance which Debtor is required to maintain or cause to be maintained pursuant to this Agreement, or (c) the Debtor shall fail to perform any other covenant or agreement on the part of Debtor to be performed hereunder and the failure to perform such other covenant or agreement shall not have been remedied within 30 days (or such longer period as the Secured Party shall designate) after notice from the Secured Party specifying the action to be taken by Debtor to remedy the same, then, in any such event, the Secured Party may, but shall not be obligated to, pay such tax, assessment, levy, fee or other charge (including any

interest or penalty payable with respect thereto), or any premium or other cost of such insurance, or take action and expend moneys in or about the performance of any such other covenant or agreement which Debtor shall have failed to perform, and each amount so paid or expended by the Secured Party shall immediately become due and payable by the Debtor to the Secured Party and part of the indebtedness secured hereby, and from and after the date of Secured Party's demand for payment of any such amount, interest thereon at the rate of fifteen percent (15%) per annum (but not in excess of the highest rate permitted by law) shall also be due and payable by the Debtor to the Secured Party and shall be part of the indebtedness secured hereby.

Section 6. TRANSFER OF DEBTOR'S INTEREST.

The Debtor shall not, without the prior written consent of the Secured Party, sell, mortgage, transfer, assign or hypothecate (other than to the Secured Party hereunder) the interest of the Debtor in the Lease and Management Agreements or either of said Agreements, or in any rental payment due or to accrue in the future thereunder, or the interest of the Debtor in the Equipment or any part thereof or in any amount to be received at any time by the Debtor from the use or disposition of the Equipment. No such consent given by the Secured Party to any such sale,

mortgage, transfer, assignment or hypothecation shall operate as a consent to any further or subsequent sale, mortgage, transfer, assignment or hypothecation by the Debtor, its successors or assigns. The provisions of this Section 6 shall not be construed as requiring the consent of the Secured Party to a technical dissolution of the Debtor resulting from the admission of new partners of the Debtor or from the death, resignation, retirement, incapacity or expulsion of any of the partners of the Debtor, and the transfer of the assets of the dissolved partnership to a successor partnership organized to continue the business of the Debtor in respect of the Equipment and the Lease and Management Agreements and composed of all of the remaining members of the former partnership and such new partners (if any). Any such successor partnership shall automatically and ipso facto become the Debtor hereunder. However, the Secured Party may require such successor partnership and/or its partners to execute, acknowledge and deliver to the Secured Party or others all such instruments, certificates and other documents as the Secured Party shall reasonably deem necessary for the purpose of evidencing or confirming that such successor partnership has succeeded to all of the rights, obligations and duties of the Debtor hereunder.

Section 7. LOAN COMMITMENT.

7.1 Secured Party's Commitment. Subject to the terms and conditions of this Agreement and on the basis of the Debtor's representations and warranties set forth in this Agreement or referred to in and required by this Agreement, the Secured Party will advance the Loan to the Debtor, on the Closing Dates hereinafter provided for, in an aggregate amount equal to the lesser of (a) the aggregate purchase price of all of the Equipment or (b) \$1,900,000.

7.2 The Closings. The Loan will be made in not more than five (5) separate advances, each of which advances shall be made on a date (a Closing Date) which shall be a business day (as defined in Section 9.4 hereof) falling not later than February 28, 1979 and designated by not less than three (3) business days' prior written notice given by the Debtor to the Secured Party. Such notice shall confirm the amount of the advance to be made by the Secured Party to the Debtor on that Closing Date. The closing of each advance of the Loan shall be held in the offices of the Secured Party's special counsel, Messrs. Eckert, Seamans, Cherin & Mellott, 42nd Floor, 600 Grant Street, Pittsburgh, Pennsylvania, or at such other place as the Secured Party and the Debtor shall agree upon in writing as the place of closing for such advance.



7.3 Amount of Each Advance of the Loan; the  
Notes. Each advance of the Loan shall be made at the closing of such advance by check of the Secured Party drawn upon Morgan Guaranty Trust Company of New York, and shall be applied at such closing to the payment of the purchase price of the Equipment being purchased by the Debtor from the Builder on the Closing Date of such advance. Except with the Secured Party's prior written consent, the amount of each such advance shall represent the purchase price of not less than ten (10) Items of Equipment. To evidence each advance of the Loan, the Debtor will execute and deliver to the Secured Party, at the closing of such advance, the Note of the Debtor in the principal amount equal to the amount of such advance, dated the Closing Date of such advance, and otherwise in the form attached hereto as Exhibit B.

7.4 Purchase Price in Excess of Loan. In the event that the aggregate purchase price of the Items of Equipment to be purchased on any Closing Date by the Debtor shall exceed the amount of the advance of the Loan which the Secured Party is then obligated hereunder to make on such Closing Date, the Debtor shall pay such excess to the Builder on such Closing Date out of the Debtor's own funds.

7.5 Failure to Deliver. If on any Closing Date, the Debtor fails to tender to the Secured Party the Note to be delivered on that Closing Date to the Secured Party or if the conditions to the obligations of the Secured Party specified in Section 8 hereof have not been fulfilled, the Secured Party may thereupon elect to be relieved of all further obligations to advance any or all of the Loan. Nothing in this Section 7.5 shall operate to relieve the Debtor from any of its obligations hereunder or to waive any of the Secured Party's rights against any or all of the Debtor, the Guarantors, the Construction Equipment Owner, or any other parties.

7.6 Expiration of Loan Commitment. The commitment of the Secured Party to advance all or any of the Loan hereunder shall expire in respect of any Item of Equipment not delivered by the Builder, accepted by the Debtor and NHIRC, and paid for, on or before February 28, 1979.

Section 8. CLOSING CONDITIONS.

The obligations of the Secured Party to make any advance of the Loan on any Closing Date shall be subject to each of the following conditions:

8.1 Execution of Various Agreements. On the first Closing Date, the Guaranty, the Construction Equipment Security Agreement and the Lease and Management Agreements

shall have been duly executed and delivered by the parties thereto and shall be in full force and effect, and NHIRC shall have executed and delivered an Acknowledgment of Assignment and Subordination Agreement (the Subordination Agreement) in the form attached hereto as Exhibit C and the Subordination Agreement shall be in full force and effect.

8.2 Recordation and Filing. On or before the first Closing Date, the Debtor will, at its sole expense, cause this Agreement, the Lease and Management Agreements and the Subordination Agreement to be duly filed, recorded and deposited with the Interstate Commerce Commission in conformity with Section 20c of the Interstate Commerce Act and in such other manner and in such other places as the Secured Party may reasonably request for the protection of the title to the Equipment or the security interest of the Secured Party in the Equipment and other Collateral and will furnish the Secured Party proof thereof.

8.3 Certificate of NHIRC. On each Closing Date, the Secured Party shall have received a Certificate dated such Closing Date, signed by the President or a Vice President of NHIRC, in substantially the form attached hereto as Exhibit D, the truth and accuracy of each of which Certificates shall be a condition to the obligation of the Secured Party to advance all or any part of the Loan on any Closing Date.

8.4 Certificate of Debtor. On each Closing Date, the Secured Party shall have received a Certificate dated such Closing Date, signed by a partner of the Debtor, to the effect that the representations and warranties of the Debtor contained in Section 2 hereof are true in all material respects on such Closing Date with the same effect as though made on and as of such Closing Date and that the Debtor has performed and complied with all agreements and conditions herein contained which are required to be performed or complied with by the Debtor on or before such Closing Date, the truth and accuracy of each of which Certificates shall be a condition to the obligation of the Secured Party to advance all or any part of the Loan on any Closing Date.

8.5 Opinions of Counsel. On the first Closing Date, the Secured Party shall have received the favorable written opinions of counsel for NHIRC and the Debtor, described in Exhibits E and F hereto, respectively.

8.6 Proceedings Satisfactory as of Each Closing Date. All proceedings taken in connection with the transactions contemplated hereby and all documents and papers relating thereto shall be satisfactory to the Secured Party and its counsel and the Secured Party and its counsel shall have received copies of such documents and papers as the Secured Party or its counsel may reasonably request in

connection with such transactions, all in form and substance satisfactory to the Secured Party and its counsel.

8.7 Notices of Acceptance. Upon the delivery to NHIRC and acceptance by the Debtor under the Lease and Management Agreements of each Item of Equipment, the Debtor shall deliver to the Secured Party and NHIRC the Debtor's notice of acceptance covering such Item of Equipment executed by a duly authorized representative of the Debtor pursuant to the Lease and Management Agreements.

8.8 Report of Railway Consulting Firm. On or before each Closing Date, the Secured Party shall have received the written report of a qualified independent railroad consulting firm selected and employed by the Secured Party, to the effect that, based on an inspection by such railroad consulting firm, each Item of Equipment to be settled for on such Closing Date (a) has been constructed in accordance with the specifications furnished by the Debtor to the Secured Party, numbered as SPEC 01-78-1 and entitled, SPECIFICATIONS FOR 70-TON, 50' - 6" SINGLE SHEATHED BOX CARS WITH OUTSIDE POSTS, 10' - 0" SLIDING DOORS, RIGID UNDERFRAME, WITHIN PLATE "C", and (b) appears to be in good order and condition, free of defects.

8.9 Debtor's Payment. Any payment required to be made by the Debtor pursuant to Section 7.4 hereof shall have been made as therein provided.

8.10 Application of Funds to Purchase Price of Equipment. The advance of the Loan made by the Secured Party on each Closing Date, together with any payment required to be made by the Debtor on such Closing Date pursuant to Section 7.4 hereof, shall be applied to the payment in full of the purchase price of the Equipment being purchased by the Debtor from the Builder on such Closing Date.

8.11 Notes. The Notes to be delivered on each Closing Date shall have been duly authorized, executed and delivered.

8.12 Sale Documentation. On or prior to each Closing Date, the Secured Party shall have received from the Builder the following items:

(a) An invoice or invoices for all of the Items of Equipment to be settled for on such Closing Date; and

(b) Executed copies of the Bill of Sale from the Builder to the Debtor transferring to the Debtor title to all of such Items of Equipment and warranting to the Debtor and the Secured Party that at the time of delivery of the Bill of Sale for each such Item, the Builder had legal title thereto and good and lawful right to sell the same, and title to each such Item of Equipment is free of all

claims, liens and encumbrances of any nature except the rights of the Secured Party or others claiming by, through or under the Debtor.

Section 9. MISCELLANEOUS.

9.1 Execution. The Notes shall be signed on behalf of the Debtor by all of its partners.

9.2 Payment of the Notes. The principal of, premium (if any), and interest on the Notes shall be payable by wire transfer of immediately available funds or as the Secured Party shall otherwise designate from time to time in writing, to such bank or trust company in the continental United States for the account of the Secured Party as the Secured Party shall designate to the Debtor from time to time in writing, and if no such designation is in effect, by check, duly mailed, first class, certified, postage prepaid, or delivered, to the Secured Party at the address to which (at the time of such payment) notices to the Secured Party are to be given pursuant to Section 9.7 hereof.

9.3 Lost or Mutilated Notes. In case any Note shall become mutilated or be destroyed, lost or stolen, the Debtor, upon the written request of the Secured Party, shall execute and deliver a new Note in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. If any such new

Note shall be so issued in lieu of and in substitution for any such lost, stolen or destroyed Note, then the Secured Party shall indemnify the Debtor against any claims or action against the Debtor (and for its attorneys' fees) resulting from the issuance of such new Note or the reappearance of the old Note. Each new Note issued pursuant to this Section 9.3 in exchange for or in substitution or in lieu of an outstanding Note shall be dated the date of such outstanding Note and shall be the valid obligation of the Debtor evidencing the same debt as said outstanding Note and entitled to the benefits and security of this Agreement to the same extent as said outstanding Note.

9.4 Business Days. As used herein, the terms "business day" or "business days" mean a calendar day or calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in the Commonwealth of Pennsylvania are authorized or obligated to remain closed.

9.5 Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises, warranties, representations, and agreements in this Agreement contained by or on behalf of the Debtor or by or on behalf of the Secured Party shall bind and inure to the benefit of the respective



successors and assigns of such parties whether so expressed or not. Without limiting the generality of the foregoing, references herein to the Debtor shall be deemed to include its immediate and remote successor partnerships.

9.6 Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

9.7 Notices. All notices and other communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States certified mails, first class, postage prepaid, addressed as follows:

If to the Debtor: McHugh Brothers  
152 Monroe Avenue  
Langhorne, PA 19047

Attn: James C. McHugh,  
Partner

If to the Secured  
Party:

U. S. Steel Credit Corporation  
Room 5688  
600 Grant Street  
Pittsburgh, PA 15230

Attn: Joseph L. Brady,  
Assistant Treasurer

or to the Debtor or the Secured Party at such other address as the Debtor or the Secured Party may designate by notice

duly given in accordance with this Section to the other party.

9.8 Release. The Secured Party shall release this Agreement and the security interest granted hereby by proper instrument or instruments upon presentation of satisfactory evidence that all indebtedness hereby secured has been fully paid or discharged.

9.9 Commitment Fee. The Debtor has paid a commitment fee in the amount of \$20,000 to the Secured Party in connection with the commitment of the Secured Party to make the Loan. Said commitment fee will be applied by the Secured Party as follows: (a) first, to pay the costs and expenses of the Secured Party in connection with the transactions contemplated hereby (including, without limitation, the fees and expenses of the Secured Party's special counsel, Messrs. Eckert, Seamans, Cherin & Mellott, of Pittsburgh, Pennsylvania, and Alvord & Alvord of Washington, D.C., and the fees and expenses of the railroad consulting firm employed by the Secured Party to inspect the Equipment), up to a total amount of \$5,000; (b) second, as a credit against the first monthly installment of principal and interest payable under the Notes; and (c) third, the balance (if any) of said commitment fee shall be retained by the Secured Party in consideration of its agreements herein contained.

9.10 Survival. All warranties, representations, covenants, promises and agreements made by Debtor herein or in any certificate or other instrument delivered by or on behalf of the Debtor under this Agreement shall be considered to have been relied upon by the Secured Party and shall survive the consummation of the transactions contemplated hereby on each Closing Date regardless of any investigation made by or on the behalf of the Secured Party. All statements in any such certificate or other instrument shall constitute warranties and representations of the Debtor.

9.11 Amendments and Waivers. Any term, covenant, agreement or condition of this Agreement may be amended or compliance therewith may be waived (either generally or in particular instance and either retroactively or prospectively) by an instrument or instruments in writing executed by both the Debtor and the Secured Party; provided, however, that either party may as to its own rights only waive in writing the requirements of any provision hereof which are for its benefit.

9.12 Governing Law. This Agreement and the Notes shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such

additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

9.13 Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Agreement.

9.14 Table of Contents and Headings. The Table of Contents hereto and any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

IN WITNESS WHEREOF, the Debtor and the Secured Party, intending to be legally bound hereby, have executed this Agreement as of the day and year first above written.

WITNESS:

McHUGH BROTHERS

/s/ Ruth Young

By /s/ James C. McHugh  
James C. McHugh, Partner

WITNESS:

/s/ Anna M. Becker

By /s/ Edward L. McHugh  
Edward L. McHugh, Partner

WITNESS:

/s/ Edna Zamba

By /s/ Robert C. McHugh  
Robert C. McHugh, Partner

WITNESS:

/s/ Karen A. Cavanaugh

By /s/ Gerard J. McHugh  
Gerard J. McHugh, Partner

WITNESS:

/s/ Lorraine Bulnin

By /s/ Adelaide Mary McHugh Riley  
Adelaide Mary McHugh Riley,  
Partner

(CORPORATE SEAL)

U. S. STEEL CREDIT CORPORATION

ATTEST:

/s/ Joseph L. Brady  
Assistant Secretary

By /s/ R. D. Ryan  
Vice President

STATE OF PENNSYLVANIA :  
 : SS  
COUNTY OF BUCKS :

On this 15th day of September, 1978, before  
me personally appeared JAMES C. McHUGH, to me known to be  
the person described in and who executed the foregoing  
instrument and he acknowledged that he executed the same as  
his free act and deed.

/s/ Effie Shaffer  
Notary Public

(SEAL)

My Commission expires: August 29, 1981

STATE OF PENNSYLVANIA :  
 : SS  
COUNTY OF BUCKS :

On this 15th day of September, 1978, before  
me personally appeared EDWARD L. McHUGH, to me known to be  
the person described in and who executed the foregoing  
instrument and he acknowledged that he executed the same as  
his free act and deed.

/s/ Effie Shaffer  
Notary Public

(SEAL)

My Commission expires: August 29, 1981

STATE OF PENNSYLVANIA :  
 : SS  
COUNTY OF BUCKS :

On this 15th day of September, 1978, before  
me personally appeared ROBERT C. McHUGH, to me known to be  
the person described in and who executed the foregoing  
instrument and he acknowledged that he executed the same as  
his free act and deed.

/s/ Effie Shaffer  
Notary Public

(SEAL)

My Commission expires: August 29, 1981

STATE OF PENNSYLVANIA :  
 : SS  
COUNTY OF BUCKS :

On this 15th day of September, 1978, before  
me personally appeared GERARD J. McHUGH, to me known to be  
the person described in and who executed the foregoing  
instrument and he acknowledged that he executed the same as  
his free act and deed.

/s/ Effie Shaffer  
Notary Public

(SEAL)

My Commission expires: August 29, 1981

STATE OF PENNSYLVANIA :  
COUNTY OF BUCKS : SS  
:

On this 15th day of September, 1978, before me personally appeared ADELAIDE MARY McHUGH RILEY, to me known to be the person described in and who executed the foregoing instrument and she acknowledged that she executed the same as her free act and deed.

/s/ Effie Shaffer  
Notary Public

(SEAL)

My Commission expires: August 29, 1981

STATE OF PENNSYLVANIA :  
COUNTY OF ALLEGHENY : SS  
:

On this 15th day of September, 1978, before me personally appeared R. D. Ryan, to me personally known, who being by me duly sworn, says that he is Vice President of U. S. STEEL CREDIT CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the



execution of the foregoing instrument was the free act and deed of said corporation.

/s/ Virginia K. Homich  
Notary Public

(SEAL)

My Commission expires: May 18, 1981

SCHEDULE I

DESCRIPTION OF EQUIPMENT

Type	Builders Specifications	Quantity	Equipment Numbers (Inclusive)	Average Unit Price	Total Price	Delivery Point
AAR Mechanical Designation XL	50'6", 70-ton single sheathed boxcars with outside posts, 10'0" sliding doors, rigid underframe, within Plate "C"	50	NHIR 751- NHIR 800	\$37,570.58	\$1,878,529	York, Pennsylvania

SCHEDULE II

McHUGH BROTHERS

Financial Statements Submitted  
to U. S. Steel Credit Corporation

I. McHugh Brothers Companies

Report on Examination of Combined Financial Statement

McHugh Brothers Heavy Hauling, Inc.  
Bucks County Construction Co. and  
its wholly owned subsidiary  
McHugh Brothers Crane Rentals, Inc.  
and its wholly owned subsidiaries  
McHugh Brothers Equipment Corp.  
McHugh Brothers Equipment Co., Inc.

Year Ended December 31, 1977

Ford Scott & Associates, Certified Public Accountants

Certified audit (with exception) and without effect of  
appraisal of assets

II. 1976, 1975, 1974, *ibid.*

III. 1977, 1976, 1975, 1974. *ibid* except does include the  
effect of appraisal of assets.

IV. Personal Financial Statements, 5/31/78 -- prepared and  
signed by each individual

Edward L. & Barbara J. McHugh  
James C. & Jeanette M. McHugh  
Robert C. & Christina J. McHugh  
Gerard J. & Maryjane McHugh  
Adelaide Mary McHugh Riley & Michael C. Riley

EXHIBIT A

FORM OF BILL OF SALE

## BILL OF SALE

EMONS RAILCAR CORP. (hereinafter called the Manufacturer), in consideration of the sum of One Dollar (\$1) and other good and valuable consideration paid by McHUGH BROTHERS (hereinafter called the Vendee), does hereby grant, bargain, sell, transfer and set over unto the Vendee, its successors and assigns, title to the following items of railroad equipment:

<u>Description</u>	<u>Quantity</u>	<u>Railroad Nos.</u>
50' 6" seventy-ton box-cars AAR Mechanical Design nation XF		(both inclusive)

To have and to hold all and singular the title to the railroad equipment above-described to the Vendee, its successors and assigns, for its own use and behoof forever.

Manufacturer guarantees that the above-described railroad equipment has been built in accordance with the applicable specifications and that the equipment will be free under normal use and service from (i) all defects in material and workmanship (except as to items specified by Vendee and not manufactured by Manufacturer or except items furnished or supplied by Vendee); and (ii) all defects in design (other than designs furnished by Vendee).

Manufacturer's obligations under this warranty shall be limited to repairing or replacing any part or parts of any of the above-described railroad equipment which shall within one (1) year after delivery of any such railroad equipment be returned to the Manufacturer's manufacturing plant at York, Pennsylvania, or delivered to such other repair facilities as Manufacturer may designate with transportation charges prepaid and which part or parts the Manufacturer shall be reasonably satisfied, upon Manufacturer's examination, are defective or were not in conformity with the applicable specifications when shipped; provided that Vendee notifies Manufacturer in writing promptly, after discovery of such defect, and before return of such railroad equipment.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, OTHER THAN OF TITLE,

INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND MANUFACTURER SHALL NOT BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY FAILURE TO MEET THE AFOREMENTIONED WARRANTY.

And the Manufacturer hereby warrants to the Vendee, its successors and assigns, that at the time of delivery of each of the above-described items of railroad equipment to the Vendee the Manufacturer had legal title thereto and good and lawful right to sell such items and the title to each such item was free and clear of all claims, liens, security interests and other encumbrances of any nature; and the Manufacturer covenants that it will warrant and defend such title against all claims and demands whatsoever arising prior to the delivery of the railroad equipment to the Vendee.

IN WITNESS WHEREOF, the Manufacturer has caused this instrument to be executed in its name by a duly authorized officer and its corporate seal to be hereunto affixed, duly attested, this \_\_\_\_ day of \_\_\_\_\_, 197\_\_.

[CORPORATE SEAL]

EMONS RAILCAR CORPORATION

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

EXHIBIT B  
FORM OF SECURED PROMISSORY NOTES

McHugh Brothers  
SECURED PROMISSORY NOTE

No. \_\_\_\_\_, 197\_\_

\$ \_\_\_\_\_ Pittsburgh, Pennsylvania

FOR VALUE RECEIVED, the undersigned, McHugh Brothers, a Pennsylvania general partnership (the Debtor), promises to pay to the order of U. S. Steel Credit Corporation, a Delaware corporation (the Secured Party), at the office of the Secured Party at Room 5688, 600 Grant Street, Pittsburgh, Pennsylvania 15230, or at such other place or places as the Secured Party may from time to time designate in writing to the Debtor, in lawful money of the United States of America, the principal sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) together with interest from the date hereof until maturity (computed on the basis of a 360-day year of twelve consecutive 30-day months) on the unpaid principal hereof at a rate per annum equal to the New York Prime Rate (hereinafter defined) in effect on the first Business Day (hereinafter defined) of each Installment Period (hereinafter defined) plus four percent (4%) per annum, such interest rate to change automatically from time to time effective as of the beginning of each Installment Period in which the New York Prime Rate in



effect on the first Business Day of such Installment Period is different from the New York Prime Rate in effect on the first Business Day of the immediately preceding Installment Period.

The principal hereof shall be payable in one hundred eighty (180) consecutive monthly installments, to be paid on the first Business Day of each calendar month commencing with the earlier of (1) March, 1979 or (2) the second calendar month commencing after the Last Closing Date (hereinafter defined). The amount of each such installment shall be the applicable percentage of the original principal amount hereof which is shown in the following table:

Table of Principal Installments

<u>Installment</u>	<u>Percentage of</u>	<u>Installment</u>	<u>Percentage of</u>
<u>No.</u>	<u>Principal</u>	<u>No.</u>	<u>Principal</u>
1	.19%	19	.23%
2	.19	20	.23
3	.19	21	.23
4	.19	22	.23
5	.20	23	.24
6	.20	24	.24
7	.20	25	.24
8	.20	26	.24
9	.20	27	.25
10	.21	28	.25
11	.21	29	.25
12	.21	30	.25
13	.21	31	.26
14	.22	32	.26
15	.22	33	.26
16	.22	34	.27
17	.22	35	.27
18	.22	36	.27

Table of Principal Installments

(Continued)

Installment	Percentage of	Installment	Percentage of
<u>No.</u>	<u>Principal</u>	<u>No.</u>	<u>Principal</u>
37	.27%	74	.40%
38	.28	75	.41
39	.28	76	.41
40	.28	77	.41
41	.29	78	.42
42	.29	79	.42
43	.29	80	.43
44	.29	81	.43
45	.30	82	.44
46	.30	83	.44
47	.30	84	.45
48	.31	85	.45
49	.31	86	.45
50	.31	87	.46
51	.32	88	.46
52	.32	89	.47
53	.32	90	.47
54	.33	91	.48
55	.33	92	.48
56	.33	93	.49
57	.34	94	.49
58	.34	95	.50
59	.34	96	.50
60	.35	97	.51
61	.35	98	.51
62	.35	99	.52
63	.36	100	.53
64	.36	101	.53
65	.37	102	.54
66	.37	103	.54
67	.37	104	.55
68	.38	105	.55
69	.38	106	.56
70	.39	107	.56
71	.39	108	.57
72	.39	109	.58
73	.40	110	.58

Table of Principal Installments

(Continued)

Installment	Percentage of	Installment	Percentage of
<u>No.</u>	<u>Principal</u>	<u>No.</u>	<u>Principal</u>
111	.59%	146	.85%
112	.59	147	.85
113	.60	148	.86
114	.61	149	.87
115	.61	150	.88
116	.62	151	.89
117	.63	152	.90
118	.63	153	.91
119	.64	154	.92
120	.65	155	.93
121	.65	156	.94
122	.66	157	.95
123	.67	158	.96
124	.67	159	.97
125	.68	160	.98
126	.69	161	.99
127	.69	162	1.00
128	.70	163	1.01
129	.71	164	1.02
130	.72	165	1.03
131	.72	166	1.04
132	.73	167	1.05
133	.74	168	1.06
134	.75	169	1.07
135	.75	170	1.08
136	.76	171	1.10
137	.77	172	1.11
138	.78	173	1.12
139	.79	174	1.13
140	.80	175	1.14
141	.80	176	1.15
142	.81	177	1.17
143	.82	178	1.18
144	.83	179	1.19
145	.84	180	2.56

Interest hereon shall be payable on each date on which an installment of principal hereof is to be paid as above provided.

As used in this Note, the following terms have the meanings defined for them as follows:

(a) "Business Day" means a calendar day other than a Saturday, Sunday or other day on which banking institutions in the State of New York are authorized or obligated to remain closed.

(b) "Installment Period" means and includes (i) the period beginning on the date hereof and ending on the earlier of (A) the end of the calendar month in which the Last Closing Date occurs or (B) February 28, 1979, and (ii) each calendar month thereafter until the calendar month in which the final installment of principal is to be paid as above provided.

(c) "Last Closing Date" means the date on which the Secured Party shall make the final advance to the Debtor of the loan provided for in the Loan Agreement, pursuant to the terms of the Loan Agreement.

(d) "Loan Agreement" means that certain Loan and Security Agreement dated as of September 15, 1978, between the Debtor, as debtor, and the Secured Party, as secured party.

(e) "New York Prime Rate" means, as of any given date, the higher of (i) the prime interest rate per annum for new 90-day loans to commercial borrowers of substantial size and high credit standing as in effect on that date for such loans made by Morgan Guaranty Trust Company of New York at its principal office in New York, New York, or (ii) the prime interest rate per annum for new 90-day loans to commercial borrowers of substantial size and high credit standing as in effect on that date for such loans made by Citibank, N.A., at its principal office in New York, New York.

The Debtor shall also pay to the order of the Secured Party, on demand, interest on any installment of principal hereof or interest hereon which is not paid when due (whether by acceleration or otherwise), at the rate of fifteen percent (15%) per annum from and after the due date of such installment until such installment is paid.

The Debtor shall have no right to prepay the principal hereof, either in whole or in part. As provided in the Loan Agreement, the Secured Party has the right to apply certain insurance proceeds or other amounts received by the Secured Party pursuant to the Loan Agreement to the prepayment of any of the principal hereof. Unless otherwise designated by the Secured Party, any such prepayment of principal shall be applied to the principal installments hereof in the inverse order of their maturity.

This Note is one of the Secured Promissory Notes of the Debtor not exceeding \$1,900,000 in aggregate principal amount, issued under, and equally and ratably secured by, the Loan Agreement. Reference is made to the Loan Agreement and all supplements and amendments thereto executed pursuant to the Loan Agreement for a description of the collateral and the nature and extent of the security and rights of the Secured Party in respect thereof. During the continuance of any Event of Default as defined in the Loan Agreement the Secured Party shall have the right, at its option, by notice in writing to the Debtor, to declare the entire unpaid principal balance hereof to be immediately due and payable, and thereupon all of such unpaid principal balance and all interest accrued hereunder shall become immediately due and payable.

It is the intention of the Debtor and the Secured Party to conform to the usury laws now in force and governing this Note. Therefore, in the event that any interest received by the Secured Party hereunder shall be determined by a final judgment, order or decree of a court of competent jurisdiction to be in excess of the highest rate permitted by the law governing this Note, then such excess shall be applied to reduce the principal hereof and the rate of interest hereunder shall automatically be reduced to the highest lawful rate that the Debtor and the Secured Party could have agreed to in

writing, and all other terms and conditions of this Note shall remain in full force and effect. Any such reduction of the principal hereof shall be applied to the principal installments hereof in the inverse order of their maturity or in such other order as the Secured Party may designate in writing.

The Debtor hereby authorizes and empowers any Prothonotary or any attorney of any court of record within the United States or elsewhere, to appear for the Debtor, at any time after the maturity of this Note, whether by acceleration or otherwise, and, with or without complaint filed, confess judgment, or a series of judgments, against the Debtor and in favor of the Secured Party or any holder hereof for the unpaid balance of the principal hereof and all other sums paid by the Secured Party or any holder hereof on behalf of the Debtor pursuant to the terms of the Loan Agreement, together with unpaid accrued interest thereon, costs of suit and attorney's fee for collection hereinafter provided for, with release of all errors, and without any stay of execution or right of appeal, on which judgment or judgments one or more executions may issue forthwith. No single exercise of the foregoing power to confess judgment shall be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be valid, voidable or void, but the power shall continue undiminished and it may be exercised from time to time as often

as the Secured Party or any holder hereof shall elect, until such time as the Secured Party or other holder hereof shall have received payment in full of the indebtedness, interest and costs. The Debtor hereby forever waives and releases all errors in said proceedings, waives stay of execution and the right of inquisition and extension of time for payment, agrees to condemnation of any property levied upon by virtue of any such extension, and waives all exemptions from levy and sale of any property that now is or hereafter may be exempted by law.

If this Note is not paid when due and is placed with an attorney for collection, and whether or not suit is entered hereon or judgment is confessed against the Debtor, the Debtor further agrees to pay to the Secured Party or other holder hereof, in addition to all other amounts then due, the costs of suit and attorneys' fees of ten percent (10%) of the amount due hereon, provided, that such attorneys' fees shall not exceed the amount permitted by law.

No failure on the part of the Secured Party or any other holder hereof to exercise any of its rights hereunder shall be deemed a waiver of such rights or of any default. Any notice or other communication which the Secured Party or other holder hereof shall elect to give to Debtor shall be deemed to have been given when deposited in the United States certified mails, first class, postage prepaid, addressed to Debtor at its



address provided in or pursuant to the Loan Agreement.

The Debtor and every person at any time liable for the payment of any or all of the indebtedness evidenced by this Note hereby waives presentment for payment, demand, notice of non-payment of this Note, protest or notice of protest, and consents to the extension at any time by the Secured Party or other holder hereof, without notice, of the time of payment of any part or the whole of the indebtedness evidenced hereby.

This Note and the Loan Agreement shall be governed by and construed in accordance with the laws, including the usury laws, of the Commonwealth of Pennsylvania; provided, however, that the Secured Party or other holder of this Note shall be entitled to all the rights conferred by any applicable Federal statute, rule or regulation.

IN WITNESS WHEREOF, the Debtor has duly executed this  
Note the day and year first above written.

McHUGH BROTHERS

By \_\_\_\_\_

James C. McHugh, Partner

By \_\_\_\_\_

Edward L. McHugh, Partner

By \_\_\_\_\_

Robert C. McHugh, Partner

By \_\_\_\_\_

Gerard J. McHugh, Partner

By \_\_\_\_\_

Adelaide Mary McHugh Riley,  
Partner

EXHIBIT C

FORM OF  
ACKNOWLEDGEMENT OF ASSIGNMENT  
AND SUBORDINATION AGREEMENT

ACKNOWLEDGEMENT OF ASSIGNMENT  
AND SUBORDINATION AGREEMENT

This Acknowledgement of Assignment and Subordination Agreement (this Agreement),

From

NEW HOPE AND IVYLAND RAILROAD COMPANY, a Pennsylvania corporation (NHIRC),

To and in favor of

U. S. STEEL CREDIT CORPORATION, a Delaware corporation (Secured Party),

Witnesseth:

Whereas, by that certain Loan and Security Agreement (the Loan Agreement) dated as of the date hereof, by and between McHugh Brothers, a Pennsylvania general partnership (Debtor), as debtor, and the Secured Party, as secured party, the Secured Party has agreed to lend to the Debtor, in not more than five (5) separate advances, a Loan (the Loan) in an amount not in excess of \$1,900,000, and the Debtor has granted to the Secured Party first security interests in each of the following:

(1) the railroad equipment described in Schedule I attached hereto and made a part hereof (collectively, the

Equipment, and individually, an Item of Equipment), together with all accessories, equipment, parts and appurtenances appertaining or attached to any of said railroad equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of, and additions, improvements, accessions and accumulations to, any and all of said railroad equipment, and together with all the rents, issues, income, profits and avails therefrom;

(2) all right, title, interest, claims and demands of the Debtor in, to and under that certain Lease Agreement and that certain Management Agreement, both dated as of the date hereof (the Lease and Management Agreements), between the Debtor and NHIRC, under which the Equipment has been leased and delivered, including all extensions of the terms of said Agreements, together with all rights, powers, privileges, options and other benefits of the Debtor under the said Agreements; and

(3) all right, title, interest, claims and demands of the Debtor in, to and under each bill of sale from Emons Railcar Corp. to Debtor for any or all of the Equipment (a Bill of Sale), and any and all other contracts and agreements relating to the Equipment or any rights or interests therein to which the Debtor is now or hereafter may be a party, together with all rights, powers, privileges, options, and other benefits of the Debtor under each Bill of Sale and

each and every other such contract and agreement; and

Whereas, it is intended by Debtor, Secured Party and NHIRC that the Loan Agreement shall be filed, recorded and deposited with the Interstate Commerce Commission, pursuant to Section 20c of the Interstate Commerce Act, prior to such filing, recording and deposit of the Lease and Management Agreements, and that the interests of NHIRC in and to the Equipment and under the Lease and Management Agreements shall be subject and subordinate in all respects to the said first security interests of the Secured Party.

Now therefore, NHIRC hereby acknowledges its receipt of an executed counterpart of the Loan Agreement and, in consideration of the making of the first advance of the Loan by the Secured Party to the Debtor pursuant to the Loan Agreement, and knowing and intending that the Secured Party shall rely hereon in making said advance, NHIRC hereby further acknowledges, covenants and agrees to and with the Secured Party as follows:

Section 1. Subordination. All rights, leasehold and other interests, claims and demands, whatsoever, which NHIRC has, could have, or may in the future have, in and to the Equipment and each and every part thereof, and all rights, leasehold and other interests, claims and demands, whatsoever, which NHIRC has, could have, or may in the future have, under

or pursuant to either or both of the Lease and Management Agreements, are, and are hereby made and declared to be, subject and subordinate in all respects to all rights, security interests, claims and demands of the Secured Party under or pursuant to the Loan Agreement and to all rights, security interests, claims and demands of the Secured Party under or pursuant to each and every supplement to the Loan Agreement or amendment thereof which may at any time or from time to time be executed and delivered by the Debtor and the Secured Party or their successors or assigns.

Section 2. Termination of Lease and Management Agreements by the Secured Party. If an Event of Default (as defined in the Loan Agreement) shall have occurred and be continuing, then, regardless of whether or not NHIRC shall be in default in the performance of any of its obligations under either or both of the Lease and Management Agreements and regardless of whether or not the Debtor shall have any right to terminate either or both of said Agreements, the Secured Party shall have the right, at its option, by notice to NHIRC, to terminate the Lease and Management Agreements.

Section 3. Certain Rights of the Secured Party under the Loan Agreement. Under and by virtue of the Loan Agreement, the Secured Party has, among other things:

(a) the immediate and continuing right to receive and collect all rentals, insurance proceeds, condem-

nation awards and other payments, tenders and security which would otherwise now or hereafter be payable to or receivable by the Debtor under or pursuant to either or both of the Lease and Management Agreements;

(b) the right to make all waivers and agreements, and to give and receive duplicate copies of all notices and other instruments or communications, which could or would otherwise be made, given or received by the Debtor under or pursuant to either or both of the Lease and Management Agreements;

(c) the right to take such action upon the occurrence of an event of default under either or both of the Lease and Management Agreements or an event which with the lapse of time or giving of notice, or both, would constitute an event of default under either or both of said Agreements, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by said Agreements or by law, and to do any and all other things whatsoever which the Debtor or any lessor is or may be entitled to do under either or both of said Agreements; and

(d) all right, title, interest, claims and demands of the Debtor in, to and under each Bill of Sale and any and all other contracts and agreements relating to the Equipment or any rights or interests therein to which the



Debtor is now or hereafter may be a party, together with all rights, powers, privileges, options and other benefits of the Debtor under each Bill of Sale and each and every other such contract and agreement.

Section 4. Termination or Modification of Lease and Management Agreements. Prior to the release of the Loan Agreement and the security interests granted therein, pursuant to Section 9.8 thereof:

(a) NHIRC may not terminate or surrender the Lease and Management Agreements or either of them, or assign, transfer or encumber any or all of its rights, interests, claims or demands under either or both of said Agreements, without the prior written consent of the Secured Party; and

(b) the respective obligations of NHIRC and the Debtor under the Lease and Management Agreements may not be amended, modified, altered, changed or waived in any manner or to any extent without the prior written consent of the Secured Party.

Section 5. Delivery of Equipment to Secured Party.

(a) In the event that the Secured Party shall terminate the Lease and Management Agreements pursuant to Section 2 hereof, or in the event that the Secured Party shall terminate either or both of the Lease and Management Agreements pursuant to any provision thereof, then the

Secured Party shall have the right, at its option, to require NHIRC to deliver possession of any or all of the Items of Equipment to the Secured Party. With respect to each Item of Equipment which NHIRC shall be required to deliver to the Secured Party, NHIRC shall, at its own cost, expense and risk, (i) forthwith assemble and place each such Item of Equipment upon such storage tracks within the continental United States as the Secured Party may designate, (ii) provide storage at the risk of NHIRC for each such Item of Equipment on such storage tracks until such Equipment has been sold, leased or otherwise disposed of by the Secured Party, and (iii) transport each such Item of Equipment to any place of interchange on the lines of a railroad within a 50-mile radius of such storage tracks, all as the Secured Party shall direct.

(b) The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises, the Secured Party shall be entitled to a decree against NHIRC requiring specific performance of the covenants of NHIRC so to assemble, deliver, store and transport the Equipment.

(c) Without in any way limiting the obligations of NHIRC under the foregoing provisions of this

Section 5, NHIRC hereby irrevocably appoints the Secured Party as the agent and attorney of NHIRC, with full power and authority, at any time while NHIRC is obligated to deliver possession of any Item of Equipment to the Secured Party pursuant hereto, to demand and take possession of such Item of Equipment in the name and on behalf of NHIRC from whomsoever shall be at the time in possession of such Item of Equipment.

(d) NHIRC hereby expressly waives any and all claims against the Secured Party and its assigns or agents for damages of whatever nature in connection with the taking of possession of any Item of the Equipment pursuant to the exercise of any right given to the Secured Party herein or in the Loan Agreement.

Section 6. Claims by NHIRC Against the Debtor.

The performance by NHIRC of its obligations to the Secured Party hereunder shall be without prejudice to any right of NHIRC to recover from the Debtor the amount of any cost, expense or loss incurred by NHIRC in or about the performance of such obligations. However, all claims and rights of recovery by NHIRC against the Debtor shall be subject and subordinate to the rights of the Secured Party to recover any and all amounts from the Debtor under or pursuant to the Loan Agreement, any Note referred to therein or any other

instrument securing any or all of the indebtedness secured by the Loan Agreement or evidenced by any such Note. NHIRC shall have no right of subrogation and hereby waives any and all rights to enforce any remedy which the Secured Party now has or hereafter may have against the Debtor, and NHIRC waives any benefit of, and any right to participate in, any security now or hereafter held by the Secured Party.

Section 7. Waiver of Notice of Acceptance. This Agreement shall take effect immediately, and NHIRC hereby waives any and all notice of acceptance hereof.

Section 8. Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 9. Notices. All notices and other communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States certified or registered mails, first class, postage prepaid, addressed as follows:

If to NHIRC: New Hope and Ivyland Railroad Company  
Post Office Box 196  
Penndel, PA 19047  
Attn: James C. McHugh,  
President

If to the  
Secured  
Party:

U. S. Steel Credit Corporation  
Room 5688  
600 Grant Street  
Pittsburgh, PA 15230  
Attn: Joseph L. Brady,  
Assistant Treasurer

or to NHIRC or the Secured Party at such other address as NHIRC or the Secured Party may designate by notice duly given to the other in accordance with this Section.

Section 10. Successors and Assigns. This Agreement shall bind NHIRC, its successors and assigns, and shall inure to the benefit of the Secured Party, its successors and assigns. References herein to the Debtor shall be deemed to include its successors and assigns, including, without limitation, its immediate and remote successor partnerships.

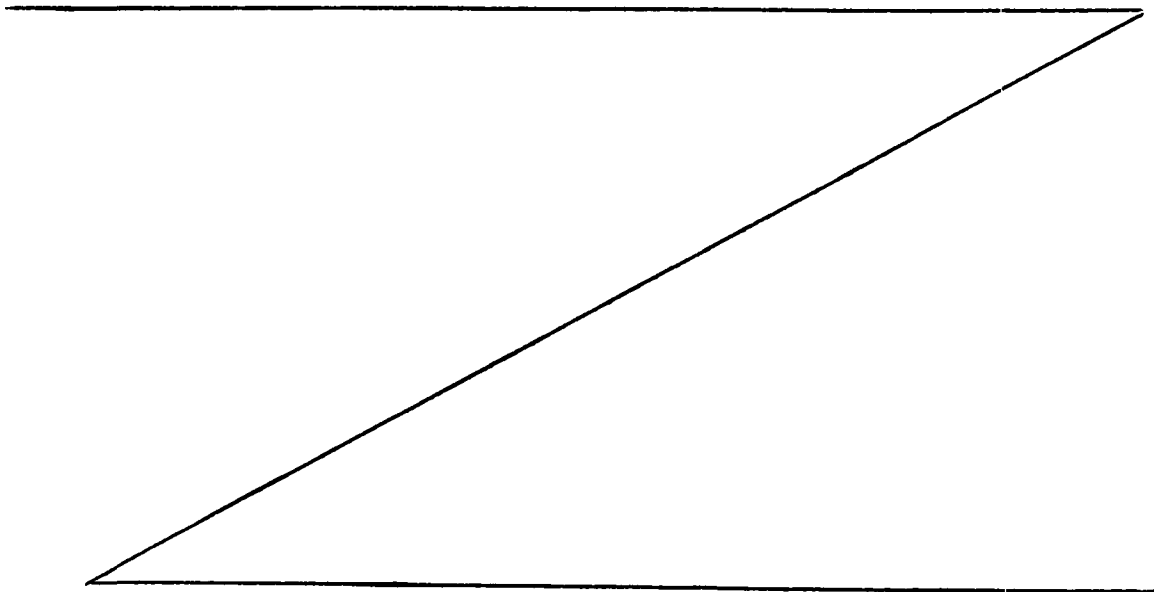
Section 11. Amendments and Waiver. Any term, covenant, agreement or provision of this Agreement may be amended only by an instrument or instruments in writing executed by both NHIRC and the Secured Party; provided, however, that compliance therewith may be waived (either generally or in particular instance and either retroactively or prospectively) by, and only by, an instrument in writing executed by the Secured Party.

Section 12. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the

Secured Party shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

Section 13. Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Agreement.

Section 14. Section Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.



IN WITNESS WHEREOF, NHIRC, intending to be legally bound hereby, has caused this Agreement to be executed and delivered to the Secured Party, at Pittsburgh, Pennsylvania, by the proper officers of NHIRC thereunto duly authorized, and, as evidence of its acceptance hereof, the Secured Party has caused this Agreement to be executed by its proper officers thereunto duly authorized, all as of the 15th day of September, 1978.

[Corporate Seal]

ATTEST:

NEW HOPE AND IVYLAND RAILROAD COMPANY

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
President

[Corporate Seal]

ATTEST:

U. S. STEEL CREDIT CORPORATION

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
President

STATE OF PENNSYLVANIA                   :  
  :  
COUNTY OF BUCKS                        : SS  
  :

On this \_\_\_\_ day of September, 1978, before me,  
personally appeared \_\_\_\_\_,  
to me personally known, who being by me duly sworn, says  
that he is \_\_\_\_\_ President of NEW HOPE  
AND IVYLAND RAILROAD COMPANY, that the seal affixed to the  
foregoing instrument is the corporate seal of said corpora-  
tion, that said instrument was signed and sealed on behalf  
of said corporation by authority of its Board of Directors;  
and he acknowledged that the execution of the foregoing  
instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission expires:



STATE OF PENNSYLVANIA

:

: SS

COUNTY OF ALLEGHENY

:

On this \_\_\_\_\_ day of September, 1978, before me personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that he is \_\_\_\_\_ President of U. S. STEEL CREDIT CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission expires:

SCHEDULE I

DESCRIPTION OF EQUIPMENT

Type	Builders Specifications	Quantity	Equipment Numbers (Inclusive)	Average Unit Price	Total Price	Delivery Point
AAR Mechanical Designation XL	50'6", 70-ton single sheathed boxcars with outside posts, 10'0" sliding doors, rigid underframe, within Plate "C"	50	NHIR 751- NHIR 800	\$37,570.58	\$1,878,529	York, Pennsylvania

EXHIBIT D

CERTIFICATE OF NHIRC TO BE DELIVERED ON EACH CLOSING DATE

The certificate of NHIRC, which is called for by Section 8.3 of the Loan and Security Agreement, shall be dated each Closing Date, shall be addressed to the Debtor and the Secured Party, and shall be as follows:

Gentlemen:

Reference is made to the Loan and Security Agreement dated as of September 15, 1978 (the Loan Agreement) entered into between the Debtor and the Secured Party. The initially capitalized terms used herein shall have the respective meanings set forth in the Loan Agreement unless the context hereof otherwise requires.

As an inducement to and as part of the consideration for advances by the Secured Party to the Debtor pursuant to the Loan Agreement, NHIRC represents and warrants as of the date hereof as follows:

1. Corporate Organization and Authority. NHIRC is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania; has all requisite power and authority and all necessary licenses and permits to own and operate its respective properties and to carry on its business as now conducted; is a common carrier by rail under the Interstate Commerce Act and will remain so as long as the Lease and Management Agreements are in effect; and is duly licensed or qualified and is in good standing as a foreign corporation in each jurisdiction in which such qualification is necessary to carry out the terms of the Lease and Management Agreements.

2. Full Disclosure. No written statement furnished by NHIRC to you in connection with the Loan Agreement or the Lease and Management Agreements, contains any untrue statement of a material fact or omits a material fact necessary to make the statements contained therein or herein not misleading. There is no fact peculiar to NHIRC which NHIRC has not disclosed to you in writing which materially affects adversely nor, so far as NHIRC can now foresee, will materially affect adversely, the properties, business, prospects, profits or condition (financial or otherwise) of NHIRC.

3. Pending Litigation. There are no proceedings pending or threatened against or affecting NHIRC in any court or before any governmental authority or arbitration board or other tribunal which

if adversely determined would materially and adversely affect NHIRC's ability to perform its obligations under the Lease and Management Agreements. NHIRC is not in default (in any respect which is material to the business or financial condition of NHIRC) with respect to any order of any court or governmental authority or arbitration board or other tribunal.

4. Corporate Authority; No Conflict with Certificate of Incorporation, etc. The execution and delivery by NHIRC of the Lease and Management Agreements and compliance by NHIRC with all of the provisions of said instruments:

(i) are within the corporate powers of NHIRC; and

(ii) will not violate any provisions of any law or any order of any court or governmental authority or agency and will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under, the Articles of Incorporation or By-laws of NHIRC or any indenture, mortgage, conditional sale, loan or credit agreement or other instrument to which NHIRC is a party or by which it may be bound, or result in the imposition of any liens or encumbrances on any property of NHIRC.

5. No Existing Defaults Under the Lease and Management Agreements. No event of default, as defined in the Lease and Management Agreements, has occurred and is continuing and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute such an event of default.

6. Governmental Approvals. No approval, consent or withholding of objection on the part of any regulatory body, federal, state or local, is necessary in connection with the execution and delivery by NHIRC of the Lease and Management Agreements or compliance by NHIRC with any of the provisions of any of said instruments.

7. Title. No mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects any property or interest therein of NHIRC, now attaches or hereafter will attach to any Item of Equipment or in any manner affects or will affect adversely the right, title and interest of the Debtor or security interest of the Secured Party therein.

8. Insurance. The Equipment is covered by all insurance required by Section 2 of the Loan Agreement and all premiums due on or prior to the date hereof in respect of such insurance have been paid in full.

9. Placed in Service. None of the Items of Equipment will have been placed in service by NHIRC or any other person prior to delivery and acceptance of such Items under the Lease and Management Agreements.

NEW HOPE AND IVYLAND RAILROAD COMPANY

By \_\_\_\_\_

Dated: \_\_\_\_\_

EXHIBIT E

DESCRIPTION OF OPINION OF COUNSEL FOR  
NHIRC TO BE DELIVERED ON THE FIRST  
CLOSING DATE

The opinion of counsel for NHIRC which is called for by Section 8.5 of the Loan and Security Agreement, shall be dated the first Closing Date, shall be addressed to the Debtor and the Secured Party, and shall be to the effect that:

1. NHIRC is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, is a common carrier by rail under the Interstate Commerce Act and has full right, power and authority to carry on its business and own its property, to enter into, execute and deliver the Lease and Management Agreements and to perform each and all of the provisions to be performed by NHIRC thereunder.

2. The Lease and Management Agreements have been authorized by all necessary corporate action on the part of NHIRC and have been duly executed and delivered by NHIRC. The Lease and Management Agreements constitute the legal, valid and binding obligations of NHIRC, enforceable in accordance with their respective terms, except as such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

3. No consent, approval or authorization of any governmental authority is required on the part of NHIRC in connection with the execution and delivery of the Lease and Management Agreements and NHIRC has complied with any applicable provisions of law requiring the designation, declaration, filing, registration and/or qualification with any governmental authority to permit the lawful execution and delivery of said instruments.

4. NHIRC is duly authorized to conduct its business in each jurisdiction in which it operates and has duly qualified and is in good standing as a foreign corporation in each jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary.

5. The execution and delivery by NHIRC of the Lease and Management Agreements and compliance by NHIRC with all of the provisions of the same will not conflict with, nor result in any breach of any of the provisions of, or constitute a default under, the provisions of the articles of incorporation or by-laws of NHIRC or of any bond, debenture, note, indenture, mortgage, conditional sale, loan or credit agreement or other instrument

to which NHIRC is a party or by which it or its property may be bound, or constitute (with the passage of time or the giving of notice, or both) a default thereunder.

6. The Lease and Management Agreements and the Loan and Security Agreement have been duly filed and recorded with the Interstate Commerce Commission and no other filing or recordation is necessary to protect the Debtor's and the Secured Party's rights in and to the Lease and Management Agreements and the Equipment in any state of the United States or in the District of Columbia.

7. There are no actions, suits or proceedings pending or threatened which will materially prevent or interfere with NHIRC's ability to perform its duties and obligations under the Lease and Management Agreements; nor is NHIRC in default (in any respect which is material to the business or financial condition of NHIRC) with respect to any order of any court or governmental authority or arbitration board or other tribunal.

9697-A

RECORDATION NO. 9697-A  
FEB 23 1983 - 11 35 AM

LAW OFFICES

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ALVORD AND ALVORD

ROBERT W. ALVORD  
ALBERT H. GREENE  
CARL C. DAVIS\*  
CHARLES T. KAPPLER  
JOHN H. DOYLE  
MILTON C. GRACE\*  
GEORGE JOHN KETO\*\*  
RICHARD N. BAGENSTOS

200 WORLD CENTER BUILDING  
918 SIXTEENTH STREET, N.W.  
WASHINGTON, D.C.  
20006-2973

OF COUNSEL  
JESS LARSON  
JOHN L. INGOLDSBY  
URBAN A. LESTER

CABLE ADDRESS  
"ALVORD"

TELEPHONE  
AREA CODE 202  
393-2266

\* NOT A MEMBER OF D.C. BAR  
\*\* ALSO A MEMBER OF OHIO BAR

February 23, 1983

3-054/060

TELEX  
440367 A AND A  
440348 CDAA UI

Ms. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Washington, D.C.

No. FEB 23 1983  
Date.....  
Fee \$ 10.00

Dear Ms. Mergenovich:

ICC Washington, D.C.

Enclosed herewith for recordation pursuant to the provisions of 49 U.S.C. §11303 are the original and copy of a Notice of Car Number Change dated February 22, 1983, a "secondary document" as that term is defined in 49 C.F.R. §1116.1(b). This document supplements a Loan and Security Agreement dated as of September 15, 1978 which was filed and recorded with your offices at 4:30 p.m. on September 18, 1978 and assigned Recordation Number 9697.

A general description of the railroad equipment covered by the enclosed document is:

Twenty (20) 50'6" 70-ton, single sheathed boxcars with outside posts, 10'0" sliding doors, rigid underframe, within Plate "C", AAR Mechanical Designation XF, bearing identifying mark and numbers NHIR 751 through NHIR 770, both inclusive, and which have been remarked, or additionally marked, with MIGN 751 through MIGN 770, both inclusive.

The names and addresses of the parties to the Loan and Security Agreement are:

Debtor: McHugh Brothers  
P.O. Box 196  
Penndel, Pennsylvania 19047

Secured  
Party: U.S. Steel Credit Corporation  
600 Grant Street  
Pittsburgh, Pennsylvania 15230

RECEIVED  
FEB 23 11 29 AM '83  
I.O.C.  
FEE OPERATION BR.

Counterpart - CT. Kappler



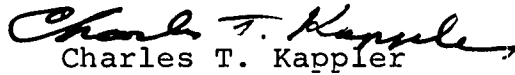
Ms. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
February 23, 1983  
Page Two

The undersigned is agent for the Secured Party for the purpose of submitting the enclosed document for filing and recordation and has knowledge of the matters contained therein.

Kindly return the stamped copy of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, Suite 200, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

Also enclosed is a check in the amount of \$10 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Very truly yours,

  
Charles T. Kappler

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

OFFICE OF THE SECRETARY

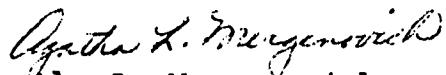
February 23, 1983

Charles T. Kappler, Esq.  
Alvord and Alvord  
200 World Center Bldg.  
918 Sixteenth Street, N. W.  
Washington, D. C. 20006-2973

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/23/83 at 11:35AM, and assigned recordation number(s). 9697-A

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)